

1 **R277. Education, Administration.**

2 **R277-204. Utah Professional Practices Advisory Commission Criminal**
3 **Background Review.**

4 **R277-204-1. Authority and Purpose.**

5 ~~[A.](1)~~ This rule is authorized ~~[under]~~by:

6 ~~(a)~~ Utah Constitution Article X, Section 3, which vests general control and
7 supervision over public education in the Board~~;~~;

8 ~~(b)~~ ~~[by]~~Section 53A-6-306, which directs the Board to adopt rules regarding
9 UPPAC duties and procedures~~;~~; and

10 ~~(c)~~ ~~[by]~~Subsection 53A-1-401(3), which allows the Board to adopt rules in
11 accordance with its responsibilities.

12 ~~[B.](2)~~ The purpose of this rule is:

13 ~~(a)~~ to establish procedures for an applicant to proceed toward licensing; or

14 ~~(b)~~ be denied to continue when an application or recommendation for
15 licensing or renewal identifies offenses in the applicant's criminal background check.

16 ~~[C.](3)~~ The standards and procedures of the Utah Administrative Procedures
17 Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

18 **R277-204-2. Initial Submission and Evaluation of Information.**

19 ~~[A.](1)~~ The Executive Secretary shall review all information received as part
20 of a criminal background review.

21 ~~[B.](2)~~ The Executive Secretary may request any of the following information
22 from an educator in determining how to process a criminal background review:

23 ~~([1]a)~~ a letter of explanation for each reported offense that details the
24 circumstances, the final disposition, and any explanation for the offense the
25 applicant may want to provide UPPAC, including any advocacy for approving
26 licensing;

27 ~~([2]b)~~ official documentation regarding each offense, including court records
28 and police reports for each offense, or if both court records and police reports are
29 not available, a letter on official police or court stationery from the appropriate court
30 or police department involved, explaining why the records are not available; and

31 ~~([3]c)~~ any other information that the Executive Secretary considers relevant

under the circumstances in a criminal background review.

~~[(C)]~~~~[(1)]~~3~~(a)~~ The Executive Secretary may only process a criminal background review after receipt of all letters of explanation and documentation requested in good faith by the Executive Secretary.

~~[(2)]~~b) The Executive Secretary shall provide timely notice if the information provided by an applicant is incomplete.

~~[(D)]~~(4) If an applicant is under court supervision of any kind, including parole, informal or formal probation, or plea in abeyance, the Executive Secretary may not process the background check review until the Executive Secretary receives proof that court supervision has terminated.

~~[(E)]~~(5) It is the applicant's sole responsibility to provide any requested material to the Executive Secretary.

~~[(F)]~~(6) The Executive Secretary shall process criminal background reviews subject to the following criteria:

~~[(1)]~~a) the Executive Secretary may clear a criminal background review without further action if the arrest, citation, or charge resulted in a dismissal, unless the dismissal resulted from a plea in abeyance agreement;

~~[(2)]~~b) the Executive Secretary shall forward a recommendation to clear the following criminal background reviews directly to the Board:

~~[(a)]~~i) singular offenses committed by an applicant, excluding offenses identified in Subsection ~~[R277-204-2F(3)]~~(6)(c), if the arrest occurred more than two years prior to the date of submission to UPPAC for review;

~~[(b)]~~ii) more than two offenses committed by the applicant, excluding offenses identified in Subsection ~~[R277-204-2F(3)]~~(6)(c), if at least one arrest occurred more than five years prior to the date of submission to UPPAC for review; or

~~[(c)]~~iii) more than two offenses committed by the applicant, excluding offenses identified in Subsection ~~[R277-204-2F(3)]~~(6)(c), if all arrests for the offenses occurred more than 10 years prior to the date of submission to UPPAC for review;

~~[(3)]~~c) the Executive Secretary shall forward the following criminal background reviews to UPPAC, which shall make a recommendation to the Board for final action:

~~[(a)]~~i) convictions or pleas in abeyance for any offense where the offense date occurred less than two years prior to the date of submission to UPPAC;

64 ([b]ii) convictions or pleas in abeyance for multiple offenses where all offenses
65 occurred less than five years prior to the date of submission to UPPAC;
66 ([c]iii) convictions or pleas in abeyance for felonies;
67 ([d]vi) arrests, convictions, or pleas in abeyance for sex-related or lewdness
68 offenses;
69 ([e]v) convictions or pleas in abeyance for alcohol-related offenses or
70 drug-related offenses where the offense date was less than five years prior to the
71 date of submission to UPPAC;
72 ([f]vi) convictions or pleas in abeyance involving children in any way; and
73 ([g]vii) convictions or pleas in abeyance involving any other matter which the
74 Executive Secretary determines, in his discretion, warrants review by UPPAC and
75 the Board; and
76 ([4]d) If the criminal background review involves a conviction for an offense
77 requiring mandatory revocation under Subsection 53A-6-501(5)(b) or meeting the
78 definition of sex offender under Subsection 77-41-102(1[6]7), the Executive
79 Secretary shall forward a recommendation directly to the Board that clearance be
80 denied.
81 [6-](7) The Executive Secretary shall use reasonable discretion to interpret
82 the information received from the Bureau of Criminal Identification to comply with the
83 provisions of this rule.
84 [H-](8) In Board review of recommendations of the Executive Secretary and
85 UPPAC for criminal background checks, the following shall apply:
86 (a) the Board shall consider a criminal background review in accordance with
87 the standards described in Section 53A-6-405;
88 ([1]b) the Board may uphold any recommendation of the Executive Secretary
89 or UPPAC, which action shall be the final agency action of USOE;
90 ([2]c) the Board may substitute its own judgment in lieu of the
91 recommendation of the Executive Secretary or UPPAC, which action shall be the
92 final agency action of USOE; and
93 ([3]d) if the Board chooses to substitute its own judgment in a criminal
94 background review, the Board shall adopt findings articulating its reasoning.
95 [H-](9) If a criminal background review arises as a result of conduct that was

96 cleared in a prior criminal background review by the Executive Secretary, UPPAC,
97 or the Board, the prior action shall be deemed final, and the Executive Secretary
98 shall clear the criminal background review.

99 ~~[(10)]~~ If a criminal background review results in an applicant's denial, the
100 applicant may request to be heard, and to have the matter reconsidered by the
101 Board, consistent with the requirements of Subsection 53A-15-1506(1)(c).

102 **KEY: educator license, background review, background check**

103 **Date of Enactment or Last Substantive Amendment: ~~[July 8,]~~2015**

104 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-**
105 **1-401(3)**